

ESTTA Tracking number: **ESTTA372378**

Filing date: **10/08/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	JoseALugoSr.
Granted to Date of previous extension	10/30/2010
Address	20 Snyder Avenue Brooklyn, NY 11226 UNITED STATES
Attorney information	Humberto Rubio, Jr. Rubio & Associates, P.A. 8950 SW 74 Ct., # 1804 Miami, FL 33156 UNITED STATES hrubio@rubiolegal.com

### Applicant Information

Application No	85006767	Publication date	08/31/2010
Opposition Filing Date	10/08/2010	Opposition Period Ends	10/30/2010
Applicant	Lugos 26a 150 East 44 Street New York, NY 10017 UNITED STATES		

### Goods/Services Affected by Opposition

Class 026. All goods and services in the class are opposed, namely: Wigs, hairpieces, and add-in and add-on hair accessories constructed primarily of synthetic and/or human hair
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)


### Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85144506	Application Date	10/04/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LUGO'S		

Design Mark	<b>LUGO'S</b>
Description of Mark	NONE
Goods/Services	Class 026. First use: First Use: 1976/06/13 First Use In Commerce: 1976/06/13 Hair products and accessories, namely, wigs, hair pieces, add-on hair accessories constructed primarily of human hair, hair extensions, hair braids, hair weaves, hair ribbons and hair ornaments in the form of combs. Synthetic hair

U.S. Application No.	85144524	Application Date	10/04/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LUGO HAIR CENTER THE MECCA OF HAIR		
Design Mark	<b>Lugo Hair Center The Mecca of Hair</b>		
Description of Mark	NONE		
Goods/Services	Class 026. First use: First Use: 1976/06/13 First Use In Commerce: 1976/06/13 Hair products and accessories, namely, wigs, hair pieces, add-on hair accessories constructed primarily of human hair, hair extensions, hair braids, hair weaves, hair ribbons and hair ornaments in the form of combs. Synthetic hair		

U.S. Application No.	85144575	Application Date	10/04/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LUGO HAIR CENTER THE MECCA OF HAIR		

Design Mark	
Description of Mark	The mark consists of a woman's head and face with somewhat wavy hair long enough to cover her neck and portion of her shoulder/back. She is facing north-east and has her head somewhat slanted towards her back. To the right of the woman's figure the words "Lugo Hair Center" and "The Mecca of Hair" appear.
Goods/Services	Class 026. First use: First Use: 1976/06/13 First Use In Commerce: 1976/06/13 hair products and accessories, namely, wigs, hair pieces, add-on hair accessories constructed primarily of human hair, hair extensions, hair braids, hair weaves, hair ribbons and hair ornaments in the form of combs. Synthetic hair

Attachments	85144506#TMSN.jpeg ( 1 page )( bytes ) 85144524#TMSN.jpeg ( 1 page )( bytes ) 85144575#TMSN.jpeg ( 1 page )( bytes ) Opposition Lugos 10-8-10.pdf ( 4 pages )(89614 bytes ) Proof of Service 10-8-10.pdf ( 1 page )(16618 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Humberto Rubio/
Name	Humberto Rubio, Jr.
Date	10/08/2010



3. Opposer and Related Companies are and have been engaged in the sale and marketing of identical and highly related goods to those recited by the Applicant in its application since a time prior to any date of use by the Applicant.

4. Opposer and Related Companies are and have been engaged in the sale and marketing of hair products and accessories, namely, wigs, hair pieces, add-on hair accessories constructed primarily of human hair, hair extensions, hair braids, hair weaves, hair ribbons and hair ornaments in the form of combs in international class 026 under Opposer's Marks.

5. Opposer is the owner of pending U.S. Application Serial No. 85144506 for "LUGO'S", pending U.S. Application Serial No. 85144524 for "Lugo Hair Center The Mecca of Hair" and pending U.S. Application Serial No. 85144575 for "Lugo Hair Center The Mecca of Hair" a stylized and/or with design, mark (collectively referred to as "Opposer's Marks")

6. Opposer has used Opposer's Marks in commerce and has acquired considerable and valuable goodwill and recognition for its marks. By virtue of its longstanding use in commerce and extensive advertising, Opposer's Marks have become well-known in the relevant industry and the public has come to associate Opposer's Marks with Opposer's hair products and related goods.

7. Furthermore, Opposer has a first date of use prior to Applicant's alleged first use and owns substantial use-based rights in and to Opposer's Marks. Opposer's first use in commerce dates back to 1976.

8. According to the U.S. Application Serial No. 85006767, Applicant is a New York Corporation located in New York with address 150 East 44 Street, 26a, New York, NY 10017. However, upon information and belief and pursuant to a brief review of the public records kept by the Secretary of the Department of State of New York, Applicant does not seem to be an active New York corporation.

9. Applicant owns U.S. Application Serial No. 85006767 and seeks to register the mark LUGO'S for international class 026 to distinguish wigs, hairpieces, and add-in and add-on hairaccessories constructed primarily of synthetic and/or human hair.

10. Upon information and belief, Applicant has been applying its confusingly identical mark to identical goods, namely, hair products including wigs, hairpieces, and add-in and add-on hair accessories constructed primarily of synthetic and/or human hair.

11. Applicant's mark is identical to and confusingly similar to Opposer's Marks and is likely, when applied to the goods of the Applicant, to cause confusion, or to cause mistake or deceive. 15 U.S.C. § 1052(d). Applicant's mark makes a highly similar commercial impression to Opposer's Marks due to its identical sound and appearance. The overall commercial impression of Applicant's mark, when applied to the same or similar goods, would cause confusion or be likely to cause confusion, mistake or deception.

12. Additionally, upon information and belief, the intended customer markets for Opposer's and Related Companies' products and Applicant's are likely to overlap.

13. Applicant is not entitled to use or register as a trademark LUGO'S for which it seeks registration in its U.S. Application Serial No. 85006767, either prior to its Application or on April 5, 2010, the date of filing of said application, or on August 31, 2010 the date of publication thereof in the Official Gazette.

14. Applicant is not the rightful owner of the above referenced application. At the time of filing, Applicant was fully aware that Opposer was the rightful owner of Opposer's Marks.

15. Jose Lugo, a/k/a Jose Lugo, Jr. is the son of Opposer and a former employee of Opposer and/or Related Companies.

16. Upon information and belief, Jose Lugo, a/k/a Jose Lugo, Jr. (the correspondent in the Application subject of this dispute) is intimately related to Applicant or is one in the same.

17. Applicant knowingly committed fraud in the declaration when filing the application that is the subject of this opposition, by stating that it was entitled to use such mark in commerce.

18. Opposer has been using Opposer's Marks since 1976 (many years prior to Applicant's first use and to Applicant's application that is the subject of this opposition) and Opposer's Marks are known among consumers and have acquired goodwill.

19. If Applicant were permitted to register LUGO'S for the goods listed in Applicant's application, customers and relevant trade would likely be confused as to the source, sponsorship, or affiliation of such goods, thereby causing damage and injury to Opposer. Persons already familiar with Opposer's products would be likely to be confused as to whether Applicant's goods are authorized or sponsored by Opposer and such confusion in trade would result in damages to Opposer. Any defect, objection or fault on the part of Application would likely also affect Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and Applicant's application be refused and denied.

This Notice of Opposition is being filed electronically through the ***Electronic System for Trademark Trials and Appeals*** and the fee required is submitted simultaneously therewith.

Opposer hereby designates the undersigned as applicant's representative upon whom notice or process in the proceedings affecting this procedure may be served.

Respectfully submitted,

LAW FIRM OF RUBIO & ASSOCIATES, P.A.  
Attorneys for Opposer  
8950 SW 74 Ct., Suite 1804  
Miami, FL 33156  
Tel: (786) 220-2061  
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/Humberto Rubio/  
Humberto Rubio, Jr., Esq.

**PROOF OF SERVICE**

I hereby certify that on October this 8<sup>th</sup> day of October, I served the foregoing document described as Notice of Opposition on the interested party in the action at its last known address by placing a true and correct copy in a sealed envelope with postage thereon fully paid in the United States Mail, via Certified Mail as follows:

LUGOS

Attn: Jose Lugo  
150 East 44 Street, 26a,  
New York, NY 10017

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/Humberto Rubio/  
Humberto Rubio, Jr., Esq.